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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.P., et al., Persons Coming
Under the Juvenile Court Law.

B292611

(Los Angeles County
Super. Ct. No. 18CCJP04263A-F)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B. W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Michael E. Whitaker, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant
County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Mother appeals from the juvenile court's jurisdictional and dispositional orders, which assumed jurisdiction over her six children under Welfare and Institutions Code section 300, subdivisions (a), (b)(1) and (j), and removed the children from her custody.¹ Mother challenges the jurisdictional findings under subdivisions (a) and (j), arguing the issues are justiciable and there was no substantial evidence to support the court's determination that she inflicted serious nonaccidental physical harm on the children. She also challenges the dispositional order, arguing there was no substantial evidence to support the removal of the children from her custody. We agree Mother's jurisdictional appeal is justiciable and address the merits, but affirm both the jurisdictional and dispositional orders, which are supported by substantial evidence of Mother's physical abuse and the substantial risk of harm to the children.

FACTUAL AND PROCEDURAL BACKGROUND

I. *General Background*

The family consists of Mother, her six children, D.P. (the father of the five older children), and D.M. (the father of the youngest child). The children are: D.1 (born in February 2007), D.2 (born in July 2009), D.3 (born in July 2010), D.4 (born in November 2012), D.5 (born in May 2014), and D.6 (born in August 2016). Mother and the children moved from Illinois to Los Angeles at the end of 2017, but D.P. continued to reside in Illinois. Mother began dating D.M. before the move and had no further contact with D.P. In Los Angeles, the family resided temporarily with D.M.'s mother, Theresa H., before moving to the Union Rescue Mission shelter in May 2018.

II. *Detention Report*

On May 29, 2018, respondent Los Angeles County Department of Children and Family Services (DCFS) received a general neglect referral involving the family from Union Rescue Mission. D.M. had tested positive for methamphetamine and amphetamine, and Mother had tested positive for opiates. A social worker visited the older children's school and separately

¹ All further unspecified references are to the Welfare and Institutions Code.

interviewed D.1, D.2, D.3, and D.4, as well as the vice-principal. Although the children reported being happy with Mother, they also described Mother's and D.M.'s physical abuse, the domestic violence between them, and D.M.'s drug use.

D.3 stated Mother hit him on the face and buttocks with an open hand and pinched the children's hands, leaving marks. D.3 also stated D.M. struck D.4 and D.5 on their bare buttocks with a belt, and that although Mother had observed this, "[s]he doesn't care." Two weeks earlier, Mother had tried to burn D.M. during an argument, as she sprayed something toward a lighter in his direction. The house started burning, and the fire was extinguished with water. The children were scared and hid in the bathroom. Mother had also broken D.6's stroller and pushed D.M. during a fight. D.3 had seen D.M. "smoking a brown substance from a plastic bag."

D.2 denied any physical abuse by Mother or D.M., and did not report any domestic violence. However, she had regularly seen D.M. smoke a brown substance from a plastic bag outside Theresa's home. She also had seen D.M. acting strangely in the home, such as "talking to a skeleton."

D.4 stated Mother struck him on the buttocks with a belt, slapped his face with an open hand, and once hit him in the eye with an extension cord. On one occasion, D.4 had seen Mother holding D.6 when D.M. pushed her, which almost caused Mother to drop D.6. Mother also pushed D.M., which caused him to fall and bleed from the head.

D.1 discussed her own mental health and behavioral issues. In the past, she had thought about "jumping off a building" when bullied by other students. She had last experienced suicidal thoughts three days earlier. She admitted having aggressive tendencies, including thoughts of choking D.2. D.1 denied any physical abuse by Mother or domestic violence between Mother and D.M.

The children explained their current living arrangement and expressed a fear or dislike of Theresa. In the mornings, the children took the bus from the shelter to Theresa's house to shower and eat breakfast before walking to school. After school, Mother or D.M. picked up the children from either school or Theresa's house. Theresa regularly disciplined the children by hitting them with a back scratcher, a stick, a belt, or her open hand, and also

called them derogatory names. She had pushed D.1 against a wall and left scratches on her back. According to D.3, Mother was aware of Theresa's physical discipline "but doesn't do anything about it."

The vice-principal had observed the children to be well groomed and healthy, with no marks or bruises. But both D.1 and D.4 exhibited behavioral problems at school. D.1's past school records revealed that these problems had persisted since kindergarten. Although Mother was offered assistance to have D.1 evaluated for mental health services, Mother did not return the necessary consent forms or follow through with this evaluation. According to the vice-principal, Mother was aware of D.M.'s drug use.

The social worker also interviewed Mother at a DCFS office.² Although the children had reported they continued seeing D.M., Mother claimed she was no longer in a relationship with D.M. and the children had no contact with him. She denied being aware of D.M.'s drug use, and explained her own prescription use was for tooth pain.³ She denied any knowledge of physical abuse by Theresa or D.M., and also denied she had physically abused the children. She admitted she had broken a stroller that morning because she was upset, and had pushed D.M. in the past when the children were not present. Mother explained she did not complete the consent forms for D.1's treatment because she had a reading disability and could not write. She agreed to contact the school regarding D.1's mental evaluation, and agreed not to leave the children under Theresa's or D.M.'s care.

Three weeks after the interviews with the children and Mother, the social worker spoke with D.M. D.M. reported that he and Mother were still in a relationship, that he had last seen her "yesterday," and that she continued leaving the children under his care. He confirmed Theresa hit the children with a back scratcher, but denied he physically abused the children

² Mother was accompanied by D.5 and D.6, who could not provide meaningful statements due to their young age, but appeared well-groomed and healthy, with no marks or bruises. Mother reported that D.5 had a speech delay, and D.6 had asthma.

³ A subsequent report indicated that her prescription for tooth pain did not correspond to the positive drug test result for opiates.

or disciplined them with any object. In the past, he had observed Mother disciplining the children with a belt. He denied any domestic violence, although he confirmed Mother had broken a stroller when he was not present. D.M. had had thoughts of hurting himself in the past. He had used methamphetamine for the past six years, and could not “remember the last time he was sober.” He also used other drugs, including “crack, pills, cocaine, and marijuana.” He admitted being under the influence on a regular basis when caring for the children. When not under the influence, he had hallucinations and heard voices calling his name. D.M. tested positive for methamphetamine, amphetamine, and marijuana that day.

The juvenile court issued an emergency order authorizing the removal of the children, and DCFS took them into protective custody on July 5, 2018.

III. *Dependency Petition*

On July 9, 2018, DCFS filed a petition on behalf of the children pursuant to section 300, subdivisions (a), (b)(1), and (j). The petition generally alleged the children were physically harmed or at substantial risk of such harm based on Mother’s and/or D.M.’s actions, specifically, physical abuse of some of the children, failure to protect the children from such abuse, exposure of the children to domestic violence, and failure to obtain mental health services for D.1. At the detention hearing, the juvenile court found DCFS had made a prima facie showing that the children were described by section 300, and detained the children from Mother’s and D.M.’s custody. The petition was subsequently amended to include the additional allegation that Mother physically abused the five older children by striking their buttocks with a belt and an extension cord, based on information obtained from an investigator summarized below.

IV. *Jurisdiction and Disposition Report*

The children were placed into four different foster homes. In late July 2018, an investigator met with each of the four older children and Mother to discuss the allegations in the dependency petition.

The children made some new allegations. D.4 stated that Mother disciplined him by hitting him with a belt or a white or brown extension cord, particularly in the buttocks, legs, eye, and chest. D.4 also stated D.M. hit him with a belt buckle, but D.M. “don’t do girls, my mom would do the

girls.”⁴ D.1 explained that Mother hit the children on the buttocks with a belt when they did something “really bad,” and hit them with a white or black extension cord when they lied, demonstrating how they held onto a headboard in bed while she disciplined them. Mother hit them two times, except for D.5 who would only be hit once because of his young age. Mother hit D.6 using only her bare hand, because she was a baby.⁵

A caregiver disclosed that the male children had linear marks on their backs that were indicative of child abuse, and the investigator personally observed the marks. D.3 had explained to the caregiver that Mother hit the children with an extension cord.

Though Mother had denied knowing of D.M.’s drug use, she now acknowledged knowing D.M. used marijuana, but claimed to have learned of his other drug use only after he tested positive at the shelter. Regarding D.1’s suicidal ideation and aggressive behavior, Mother believed D.1 was “doing fine.” She explained that D.1 had taken daily medication in Illinois to help her calm down, but Mother did not know the name of the medication, and had not attempted to refill the prescription when it ran out. The investigator noted that Mother had “failed to obtain the professional attention needed for D.1’s mental health issues,” and had “allowed [D.M.] to care for the children while under the influence after being informed it was unsafe for him to do so.”

V. *Jurisdiction and Disposition Hearing*

On September 10, 2018, the juvenile court held a combined jurisdiction and disposition hearing. The court found D.P. to be the presumed father of

⁴ D.4 described the physical altercation he observed between Mother and D.M. differently. He stated he saw D.M. and Mother swinging fists and hitting each other, and D.M. choking Mother, which resulted in Mother’s bleeding from her head. The children were crying, and he asked Mother and D.M. to stop.

⁵ In addition, the children revised some previous allegations. D.3 denied witnessing any domestic violence between D.M. and Mother, but confirmed there was a skeleton head D.M. kept, as D.2 had previously described. D.2 denied any knowledge of substance abuse by D.M., and cried or was silent throughout the interview.

the five older children and D.M. to be the presumed father of D.6.⁶ Turning to jurisdiction, the court admitted DCFS reports into evidence and made tentative findings that Mother was not credible “regarding denial of substance abuse, physical abuse of the minor children, failure to protect the minor children, and domestic violence with [D.M.]” After hearing from the parties, the court confirmed its tentative ruling that Mother was not credible and sustained the petition in its entirety. The court adopted the findings that Mother and D.M. endangered the children and placed them and their siblings at risk of serious physical harm:

- 1) Mother physically abused D.3 by pinching his hand and striking his buttocks with her hand.
- 2) Mother physically abused D.4 by striking his buttocks with a belt, striking his hand, and striking his eye with an extension cord.
- 3) D.M. physically abused D.4 and D.5 by striking their buttocks with a belt. Mother knew of the abuse and failed to protect them.
- 4) Mother pushed D.M. and destroyed a stroller in D.3’s presence. Mother attempted to burn D.M. and caused a fire in the home. In D.4’s presence, D.M. and Mother pushed each other, which caused D.M. to fall and bleed from the head.
- 5) Mother physically abused D.1, D.2, D.3, D.4, and D.5 by striking their buttocks with a belt and an extension cord.
- 6) Mother and D.M. failed to protect the children by allowing them to live with Theresa, when they knew of Theresa’s ongoing physical abuse.
- 7) Mother knew of D.M.’s ongoing substance abuse and failed to protect the children by placing them in D.M.’s care.
- 8) Mother knew of D.M.’s mental and emotional problems and failed to protect the children by placing them in D.M.’s care.

⁶ D.P.’s whereabouts were unknown. Mother represented to the court that there were no orders made regarding custody of any of her children in the state of Illinois or in any other jurisdiction.

9) Mother medically neglected D.1 by failing to obtain mental health treatment for her.⁷

Continuing to disposition, the juvenile court admitted the DCFS reports and heard foundational testimony from Mother regarding her recent participation in case-related programs.⁸ The court declared the children dependents of the court, removed them from parental custody, and granted family reunification services. Mother's case plan consisted of a parenting education program, an anger management program, individual counseling, and monitored visitation. Mother timely appealed the jurisdictional and dispositional orders.

DISCUSSION

I. Mother's Jurisdictional Appeal is Justiciable.

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) "An important requirement for justiciability is the availability of 'effective' relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status." (*Id.* at p. 1490.) "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged

⁷ The first five findings supported the section 300, subdivision (a) counts. All nine findings supported the subdivision (b)(1) counts. The first through third, fifth, and ninth findings supported the subdivision (j) counts. On appeal, Mother challenges only the subdivision (a) counts, and duplicative subdivision (j) counts.

⁸ Beginning two weeks before the hearing, Mother had completed only one domestic violence class, one anger management class, and three parenting classes, despite referrals for these services pursuant to the court's order three months earlier.

statutory grounds for jurisdiction are supported by the evidence.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492 [“an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence”].)

There is a discretionary exception to the justiciability doctrine in dependency cases. “[W]e generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)

Mother contends that the jurisdictional findings under section 300, subdivision (a) and the duplicative findings under subdivision (j) are prejudicial to her in future dependency proceedings, and also disputes the juvenile court’s disposition order. She does not challenge the jurisdictional findings made under subdivision (b)(1). Findings that Mother nonaccidentally harmed the children or exposed them to a substantial risk of physical harm carry a heavy stigma, and “could potentially impact the current or future dependency proceedings.” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) We therefore exercise our discretion to review her claims as to the court’s jurisdictional findings under section 300, subdivisions (a) and (j), even though its findings under subdivision (b)(1) independently support jurisdiction. (See *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119 [“Because the finding that Mother intentionally hurt and neglected her children may be used against Mother in future dependency proceedings, we reach the merits of mother’s appeal.”].)

II. Substantial Evidence Supports the Jurisdictional Findings.

A. Governing Law and Standard of Review

DCFS has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; § 355, subd. (a).) Mother argues DCFS failed to

carry this burden on the subdivision (a) counts, and the duplicative subdivision (j) counts.

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]”” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) “““The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.’ [Citations.]” [Citation.]” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 763.)

Jurisdiction is proper under section 300, subdivision (a) where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” (§ 300, subd. (a).) Jurisdiction is also proper under section 300, subdivision (j), where “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” (§ 300, subd. (j).)

B. *Mother’s Physical Abuse of the Children*

First, substantial evidence supports the finding that Mother’s physical abuse of the five older children justified jurisdiction under section 300, subdivision (a) as to all the children. D.1 described with specificity how Mother hit the five older children on the buttocks with a belt or an extension cord, demonstrating for the investigator how they held onto the headboard of a bed. Consistent with D.1, D.4 stated Mother struck him with a belt or an extension cord on the buttocks, leg, eye and chest. The visible linear marks on the boys’ backs were consistent with D.3’s explanation to the caregiver that Mother hit them with an extension cord. D.M. also had observed Mother disciplining the children with a belt. On this record, it was reasonable for the

juvenile court to conclude that Mother had physically abused the children. (See *In re Hadley B.* (2007) 148 Cal.App.4th 1041, 1050 [“Facts supporting allegations that a child is one described by section 300 are cumulative.”].)

Mother’s argument that there was no evidence the children suffered or were exposed to a substantial risk of nonaccidental harm is unpersuasive. Although the children appeared healthy and well-groomed, their statements generally corroborated each other’s accounts that Mother physically disciplined them with the purposeful and nonaccidental use of a belt or an extension cord. The juvenile court was entitled to credit the children’s statements, and to discredit Mother’s statements to the contrary. (See Evid. Code, § 411 [“Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact.”].) The trial court found the evidence supported each of its findings that Mother and D.M. had endangered the children, and placed them and their siblings at risk of serious nonaccidental physical harm. We reject Mother’s argument that the cause of the linear marks on the boys’ backs was a matter of mere conjecture and speculation. In light of the children’s accounts, it was reasonable for the court to conclude that the linear marks resembling scars were indicative of past physical abuse by Mother, and posed a risk of further physical harm. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133 [“the court may nevertheless consider past events when determining whether a child presently needs the juvenile court’s protection”].) Thus, substantial evidence supports the trial court’s findings of physical abuse under subdivision (a).

C. *Domestic Violence Between Mother and D.M.*

Second, substantial evidence supports the finding that the children’s exposure to domestic violence between Mother and D.M. justified jurisdiction under section 300, subdivision (a). (See *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-600 [Exposing children to domestic violence may justify jurisdiction under section 300, subdivision (a): “Domestic violence is nonaccidental.”].) “Domestic violence impacts children even if they are not the ones being physically abused, ‘because they see and hear the violence and the screaming.’ [Citations.]” (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 134.) Here, the children were knowingly exposed to Mother’s and D.M.’s domestic

violence, placing them in harm's way. (See *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [jurisdiction triggered under section 300 if domestic violence is ongoing and placed the child in harm's way].) D.3 had recently witnessed Mother trying to burn D.M. with a lighter during an argument, which started a fire in the home, causing the children to hide in the bathroom. D.3 also had witnessed Mother breaking D.6's stroller during a fight. D.4 reported seeing Mother almost drop D.6 while she and D.M. pushed each other during a fight, which also caused D.M. to fall and bleed from the head. The children cried as they saw D.M. choking Mother during the fight. Substantial evidence supports the court's jurisdictional findings under section 300, subdivision (a) that the children suffered, or were at substantial risk of suffering, serious physical harm inflicted nonaccidentally as a result of Mother's physical abuse and the domestic violence between Mother and D.M.⁹

III. Substantial Evidence Supports the Removal Order.

A. *Governing Law and Standard of Review*

A juvenile court may remove a child from the parent with whom he or she resides if the court finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The [juvenile] court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.) As with jurisdictional orders, removal orders are reviewed for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

⁹ Because Mother challenges only the court's jurisdictional findings under section 300, subdivision (a) counts and duplicative subdivision (j) counts, we do not address Mother's medical neglect of D.1, which supported jurisdiction under subdivisions (b)(1) and (j).

B. *Necessity for Removal*

The court found by clear and convincing evidence that the children would be at a substantial risk of harm if returned to Mother's custody, based on her own physical abuse of the children, her failure to protect them from D.M.'s and Theresa's known physical abuse, the domestic violence between D.M. and Mother which placed the children in harm's way, and her medical neglect of D.1. Mother demonstrated consistently poor judgment and a clear disregard for the children's well-being and safety, and the court properly determined that removal was necessary to protect them. Mother's preliminary efforts at rehabilitation did not relieve the court's concerns. At the time of the disposition hearing, Mother had only recently begun to address the issues necessitating removal, attending a handful of classes which had been ordered by the court three months earlier.

The court properly concluded that no reasonable alternatives to removal existed to protect the children from physical harm. The court determined Mother was not credible when she denied physically abusing the children, denied knowing of D.M.'s substance abuse, denied exposing the children to domestic violence, and denied knowing of D.M.'s and Theresa's physical abuse while continuing to place the children in their care. Previous efforts had been made to prevent removal when Mother was asked not to place the children in D.M.'s and Theresa's care due to serious safety concerns, and to contact the school regarding critical mental health services for D.1 – both of which she failed to do. It was reasonable for the juvenile court to infer, based on Mother's past conduct and her persistent disregard for the children's safety, that other alternatives to removal – such as release with conditions – would have been ineffective. Thus, substantial evidence supports the juvenile court's removal order.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.